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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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APR 27 2005

Federal Communications Commission  
Office of Secretary

In the Matter of

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Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Richlands, Shallotte, Topsail Beach, and  
Wrightsville Beach, North Carolina)

MB Docket No. 05-16  
RM-11143

To:    The Office of the Secretary

**SEA-COMM, INC.'S OPPOSITION TO CONNER MEDIA CORPORATION'S  
"MOTION FOR LEAVE TO FILE PROCEDURAL RESPONSE TO REPLY  
COMMENTS" AND "PROCEDURAL RESPONSE TO REPLY COMMENTS"**

Sea-Comm, Inc. ("Sea-Comm"), the petitioner for rule making in this proceeding to amend the Commission's Table of Allotments for FM Broadcast Stations, 47 C.F.R. § 73.202(b) (2004), by its attorneys and pursuant to 47 C.F.R. § 1.45(b) (2004), hereby respectfully submits its Opposition (the "Opposition") to the "Motion for Leave to File Procedural Response to Reply Comments" (the "Motion") and the "Procedural Response to Reply Comments" (the "Response") that were simultaneously submitted in this proceeding by Conner Media Corporation on April 12, 2005.<sup>1</sup> As is demonstrated in this Opposition, Conner's Response adds nothing of value to the arguments that have already been thoroughly presented within the authorized cycle of pleadings under 47 C.F.R. §§ 1.415 and 1.420 (2004); hence,

<sup>1</sup> This Opposition is timely filed, in accordance with the provisions of 47 C.F.R. §§ 1.45(b) and 1.4(c), 1.4(d), 1.4(e), and 1.4(h) (2004).

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Conner's Motion's proposal to burden this proceeding with an unauthorized supplemental filing should be denied.<sup>2</sup>

Conner argues in its Response that its Comments and Counterproposal (the "Counterproposal") that were submitted in this proceeding were in fact timely filed with the Office of the Commission's Secretary on March 21, 2005, as required by the *Notice of Proposed Rule Making* in this proceeding, DA 05-76, adopted on January 26, 2005 and released on January 28, 2005 20 FCC Rcd. \_\_\_\_, 70 Fed. Reg. 7220 (published on February 11, 2005) (the "*NPRM*"). In support of that assertion, Conner's Response appends a declaration from Lonnie Robertson, Jr., whose company apparently provides agency filing services to Conner's law firm and who undertook to file the Counterproposal with the Commission on a timely basis on March 21, 2005, as required by the *NPRM*. See Conner Response, Attachment A. In his "Statement Under Penalty of Perjury," dated April 8, 2005, Mr. Robertson states that he personally delivered a copy of Conner's Counterproposal to the Commission's "... Secretary's remote office at 236 Massachusetts Avenue, NE, Suite 110 on March 21, 2005. . . ." and that he "... personally observed the document being stamped in as received on that date." *Id.*

Of course, Sea-Comm has no basis for confirming or denying Mr. Robertson's statements. However, it should be remembered that Mr. Robertson's dispute as to when and where he delivered Conner's Counterproposal is not with Sea-Comm, in any event. Unfortunately for Mr. Robertson and for his derivative client Conner, his dispute is really with the Commission's own records.

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<sup>2</sup> See, e.g., 47 C.F.R. § 1.415(d) (2004) ("No additional comments [beyond initial comments and reply comments] may be filed unless specifically requested or authorized by the Commission"). See also the authorities cited at footnote 7, *infra*.

In the first instance, the best evidence is the document itself. Notwithstanding Mr. Robertson's assertion to the contrary, as demonstrated in Sea-Comm's Reply Comments that were timely filed in this proceeding on April 5, 2005 ("Sea-Comm's Reply Comments"), at Appendix A, the official date-stamped copy of Conner's Counterproposal reposing in the Commission's files demonstrates that the document was received by an unspecified Commission "Bureau/Office" on March 21, 2005; but that date-stamp was subsequently crossed off, and the date stamp showing that the document was received by the Office of the Commission's Secretary – which Conner's Response does not dispute is the appropriate filing location designated in the *NPRM* – indicates that the document was so received on March 29, 2005, fully eight days after the deadline for the submission of counterproposals in this proceeding, according to the *NPRM* and as required by 47 C.F.R. § 1.420(d) (2004).<sup>3</sup>

Secondly, appended to this Opposition, as Appendix A, is a hard-copy print-out of an excerpt from the Commission's Electronic Comment Filing System ("ECFS") which demonstrates conclusively that the Commission's records show Conner's Counterproposal as having been submitted and received by the Commission on March 29, 2005. Hence, as Sea-Comm's Reply Comments demonstrate, Conner's Counterproposal is in direct conflict with the requirements of 47 C.F.R. § 1.420(d) and cannot, consistent with that regulation, be considered by the Commission.

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<sup>3</sup> "Counterproposals shall be advanced in initial comments only . . . ." *See also* the authorities cited in Sea-Comm's Reply Comments, at p. 3.

Bizarrely, Conner's Response continues to insist to the contrary, even proffering as support for its contention to that effect evidence which conclusively demonstrates the opposite. Thus, Conner's Response maintains:

We do know that the day after timely filing, we did receive a copy of the first page [of Conner's Counterproposal] bearing a March 21 receipted stamp *from the Office of the Secretary*; a copy is attached hereto as Attachment B.<sup>4</sup>

However, an examination of the above-cited Attachment B to Conner's Response indeed confirms what Sea-Comm's Reply Comments have now indisputably asserted: the date stamp shown thereon, while indicating that the document in question was "Received" at the Commission on March 21, 2005, also incontrovertibly demonstrates that it was so received at an unspecified "Bureau/Office" of the "Federal Communication [*sic*] Commission," and not by the Office of the Commission's Secretary, which – as noted – Conner does not dispute was the proper location for the filing of the Conner Counterproposal designated by the Commission.<sup>5</sup> Thus, it can be concluded that there is no genuine dispute over the following dispositive fact: Conner's Counterproposal was submitted to an unspecified Bureau or Office location within the Commission on March 21, 2005, but was not timely received at the location designated for the timely filing of comments and counterproposals in this proceeding, namely, the Office of the Commission's Secretary, until eight days later.

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<sup>4</sup> See Conner Response, at footnote 2 (emphasis added).

<sup>5</sup> See 47 C.F.R. § 1.7 (2004):

Unless otherwise provided in this Title, by Public Notice, or by decision of the Commission or of the Commission's staff acting on delegated authority, pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.

Hence, Conner's Response offers nothing that adds to the elucidation or clarification of this matter and should be rejected as both unauthorized and superfluous, and Conner's accompanying Motion should be denied.

Conner's Response attempts to suggest some irregularity in the filing of Sea-Comm's own Comments in this proceeding that were timely filed with the Office of the Commission's Secretary on March 10, 2005, with the implication that such an irregularity might somehow excuse the untimeliness of the filing of Conner's own Counterproposal. Apart from the complete irrelevance of whether Sea-Comm's Comments were timely and properly filed to the question at hand – namely, whether Conner's Counterproposal was timely and properly filed – the Response is simply mistaken (once again) on a crucial fact. Sea-Comm's Comments were filed under a transmittal letter from Sea-Comm's undersigned counsel that was addressed to the Office of the Secretary and that was stamped in as "Received" by the Office of the Secretary on March 10, 2005 (fully 11 days prior to the deadline for the filing of comments in this proceeding established by the *NPRM*). Appended to this Opposition, as Appendix B, are copies of that transmittal letter and of Sea-Comm's Comments themselves. The document, including the Commission's Secretary's "Received" date stamp, clearly speaks for itself and admits of no rebuttal.<sup>6</sup>

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<sup>6</sup> Conner's Response acknowledges as much (*see* Response, at footnote 3), but then loses itself in a completely irrelevant argument that Sea-Comm's counsel's transmittal letter is somehow procedurally irregular. While Sea-Comm understands, in these circumstances, Conner's desire to draw the Commission's attention away from the issue at hand – to wit, whether Conner's Counterproposal was timely filed at the location designated by the Commission – there is no warrant for wasting Sea-Comm's and the Commission's time over the regularity of the filing of Sea-Comm's own Comments in this proceeding, with or without a transmittal letter, or whether the Commission's Secretary should have date-stamped both Sea-Comm's counsel's transmittal letter and Sea-Comm's Comments. Footnote 3 to Conner's Response in fact underscores the essential thrust of this

(continued...)

Moreover, appended to this Opposition as Appendix C is a hard-copy print-out of an excerpt from the Commission's ECFS database demonstrating that Sea-Comm's Comments were filed and received on March 10, 2005. Conner's Response's attempt to divert this proceeding into an irrelevant inquiry into the propriety of Sea-Comm's Comments, thereby departing from the only question that the Response itself purports to address – the timeliness and the propriety of the filing of Conner's own Counterproposal – fails as a matter of fact, as well as a matter of relevance.

Facts are stubborn things. Apart from the declaration of Mr. Robertson – which, as noted, is unanimously contradicted by all of the available Commission records – the Response offers nothing in the way of edification as to the initial misfiling of Conner's Counterproposal at a Commission location other than the one location designated for the proper filing of the same, and the subsequent untimely receipt of the Counterproposal at the location designated by the Commission. As a consequence, the Response has no value and should be rejected, and Conner's correlative Motion should be denied.<sup>7</sup>

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(...continued)

Opposition: that the Response offers nothing of substance to the issue at hand, and should be dismissed as unauthorized, irrelevant, argumentative, and superfluous.

<sup>7</sup> See, e.g., *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Dos Pasos, Chualar, and Big Sur, California)*, 19 FCC Rcd. 1826, 1830 (Assistant Chief, Audio Division, Media Bureau, 2004) (counterproponent's request for leave to file response to petitioner's reply comments denied); *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Bismarck, Centreville, Farmington, and Ironton, Missouri and Herrin, Illinois)*, 10 FCC Rcd. 5041, n. 3 (Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau, 1995) (petitioner's motion for leave to file statement and statement, filed after close of comment and reply comment period, denied).

Finally, the Response complains that Conner should not be held to the consequences of its non-compliance with the Commission's filing requirements that were the subject of the Commission's *Public Notice*, DA 05-995, released on April 1, 2005, entitled, "*Filing Requirements in FM Allotment Rulemaking Proceedings*" (the "*Public Notice*"), a copy of which was submitted as Appendix B to Sea-Comm's Reply Comments. Conner's Response suggests that the *Public Notice*, having been issued after the filing of Conner's Counterproposal, somehow changed the Commission's filing requirements in proceedings involving proposed amendments to 47 C.F.R. § 73.202(b), and that Conner should not be held accountable for any such change announced after the submission of Conner's Counterproposal.

The fallacy of Conner's argument is that the *Public Notice* did not, in fact, alter the filing requirements. As the *Public Notice* itself indicates, in its opening line:

The Audio Division, Media Bureau, issues this *reminder* regarding filing requirements for rulemaking proceedings to amend the FM Table of Allotments, 47 C.F.R. § 73.202(b) [emphasis added].

The *Public Notice* goes on to cite prior a prior Public Notice (indeed, the very Public Notice upon which Conner's Response seeks to rely<sup>8</sup>), as well as 47 C.F.R. § 1.7, to underscore that filings in rulemaking proceedings under 47 C.F.R. § 73.202(b), such as Conner's Counterproposal, need to be directed to, and received by, the Office of the Secretary in a timely fashion. Hence, contrary to the suggestion in Conner's Response, the *Public Notice* did not alter in any way the pre-existing requirements for the timely and proper filing of Conner's Counterproposal. Again, the Response is factually off the mark, adds nothing of decisional value

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<sup>8</sup> *Reminder, Filing Locations for Paper Documents and Instructions for Mailing Electronic Media*, 18 FCC Rcd. 16705 (2003). See Conner Response, at p. 2.

to the matters raised in Sea-Comm's Reply Comments as to the untimely and improper filing of Conner's Counterproposal, and should be rejected. As a corollary to that, Conner's Motion should be denied.

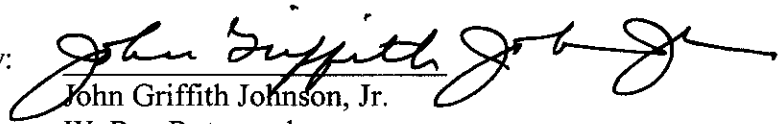
**Conclusion**

For the reasons set forth above, Sea-Comm respectfully urges the Commission to deny Conner's Motion and to reject Conner's Response.

Respectfully submitted,

**SEA-COMM, INC.**

By:



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W. Ray Rutngamlug  
Its Attorneys

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April 27, 2005



## **APPENDIX A**

**Federal Communications Commission****1 Record(s) Found For Proceeding:05-16****Proceeding:** 05-16**Date Received/Adopted:** 03/29/05**Document Type:** COMMENT**File Number/Community:****Filed on Behalf of:** Conner Media Corporation**Filed By:** Womble Carlyle Sandridge & Rice**Attorney/Author Name:** Peter Gutmann**Complete Mailing Address:**

1401 I Street, NW

Seventh Floor

Washington, DC 20005

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updated 12/11/03

## **APPENDIX B**

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March 10, 2005

**BY HAND DELIVERY**

Marlene H. Dortch  
Secretary  
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Washington, DC 20002

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**MAR 10 2005**

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Federal Communications Commission  
Office of Secretary

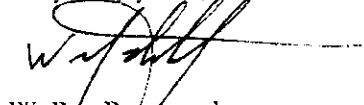
Re: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM  
Broadcast Stations. (Richlands, Shallotte, Topsail Beach, and Wrightsville Beach,  
North Carolina); MB Docket No. 05-16

Dear Madame Secretary:

Enclosed for filing on behalf of Sea-Comm, Inc. ("Sea-Comm"), the licensee of primary commercial FM radio broadcasting stations WBNU, Shallotte, North Carolina ("WBNU"), WBNF, Wrightsville Beach, North Carolina ("WBNE"), and WWTB, Topsail Beach, North Carolina ("WWTB;" WWTB, with WBNU and WBNE, collectively, the "Sea-Comm Stations"), are the comments of Sea-Comm in response to the *Notice of Proposed Rule Making* released on January 28, 2005 in the above-captioned proceeding.

If there are any questions regarding this matter, please do not hesitate to contact the undersigned.

Very truly yours,



W. Ray Rutngamlug  
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

Enclosure

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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MAR 10 2005

Federal Communications Commission  
Office of Secretary

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 05-16
Table of Allotments,	)	RM-11143
FM Broadcast Stations.	)	
(Richlands, Shallotte, Topsail Beach, and	)	
Wrightsville Beach, North Carolina)	)	

To: Assistant Chief, Audio Division, Media Bureau

**COMMENTS OF SEA-COMM, INC.**

Sea-Comm, Inc. ("Petitioner" or "Sea-Comm"), the licensee of primary commercial FM radio broadcasting stations WBNU, Shallotte, North Carolina ("WBNU"), WBNE, Wrightsville Beach, North Carolina ("WBNE"), and WWTB, Topsail Beach, North Carolina ("WWTB;" WWTB, with WBNU and WBNE, collectively, the "Sea-Comm Stations"), hereby submits its comments in response to the *Notice of Proposed Rule Making* in the above-captioned proceeding, DA 05-76, adopted January 26, 2005 and released January 28, 2005, 19 FCC Rcd. \_\_\_\_, 70 Fed. Reg. 7220-7221 (published on February 11, 2005) (the "*NPRM*"). The *NPRM* was issued at the behest of Sea-Comm, in response to Sea-Comm's Petition for Rule Making (the "Petition"), filed on April 12, 2004.

Sea-Comm welcomes the *NPRM*, and hereby incorporates by reference the information set forth in Petition.<sup>1</sup> Sea-Comm hereby reiterates its commitment promptly to apply to the

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<sup>1</sup> The only issue that appeared to concern the Commission in the *NPRM* was the question of the so-called "*Tuck*" showing with respect to the independence of the community of Richlands, North Carolina from the Jacksonville, North Carolina Urbanized Area. *NPRM*, at Para. 2. However, inasmuch as the Commission proceeded in the next paragraph of the *NPRM* to state that "[t]his proposal . . . warrants consideration because it  
(continued...)


Commission for construction permits to implement the proposed changes to the Table of Allotments for FM Broadcast Stations, 47 C.F.R. Section 73.202(b) (2004), that are set out in the *NPRM*, and, if such authorizations are granted, promptly to implement such changes.

Sea-Comm respectfully urges the Commission to adopt a *Report and Order* in this proceeding at the earliest practicable date in a manner consistent with the *NPRM*.

Respectfully submitted,

**SEA-COMM, INC.**

By:



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March 10, 2005

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(...continued)

could provide Richlands with its first local aural transmission service . . . ,” it is Sea-Comm’s understanding that the *NPRM* found Sea-Comm’s *Tuck* showing in that respect to be persuasive. In any event, by incorporating in these Comments Sea-Comm’s Petition, as is permitted in these kinds of proceedings, *NPRM* Appendix, at Para. 2, Sea-Comm believes that it has adequately addressed and resolved any *Tuck* issues pertaining to the matters raised in the *NPRM*.

## **APPENDIX C**



# Federal Communications Commission

## 1 Record(s) Found For Proceeding:05-16

<b>Proceeding:</b> 05-16	<b>Type Code:</b> OT
<b>Date Received/Adopted:</b> 03/10/05	<b>Date Released/Denied:</b>
<b>Document Type:</b> OTHER	<b>Total Pages:</b> 3
<b>File Number/Community:</b>	<b>DA/FCC Number:</b>
<b>Filed on Behalf of:</b> Sea-Comm, Inc.	
<b>Filed By:</b> Paul Hastings Janofsky & Walker	
<b>Attorney/Author Name:</b> W. Rayngamlug	<b>Document Date:</b>
<b>Complete Mailing Address:</b> 875 15th Street, NW Washington, DC 20005	
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**CERTIFICATE OF SERVICE**

I, Shandila Collins, a secretary in the law firm of Paul, Hastings, Janofsky & Walker, LLP, do hereby certify that I have on this twenty-seventh day of April, 2005, caused a copy of the foregoing **SEA-COMM, INC.'S OPPOSITION TO CONNER MEDIA CORPORATION'S "MOTION FOR LEAVE TO FILE PROCEDURAL RESPONSE TO REPLY COMMENTS" AND "PROCEDURAL RESPONSE TO REPLY COMMENTS"** to be sent to the following by first-class United States mail, postage prepaid:

Peter Gutmann  
Womble, Carlyle, Sandridge & Rice, PLLC  
1401 Eye Street, N.W.  
Seventh Floor  
Washington, D.C. 20005  
Counsel to Conner Media Corporation

  
Shandila Collins

